Expedited Bill	No. <u>45-09</u>
Concerning: <u>(</u>	Contracts and Procurement
- Amendm	nents
Revised: Dec	ember 18, 2009 Draft No. 4
Introduced: _	December 1, 2009
Expires:	June 1, 2011
Enacted:	
Executive:	
Effective:	
Sunset Date:	None
Ch la	ws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) exempt contracts for media advertisement from the Procurement Law;
- (2) exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
- (3) expand the coverage of the Wage Requirements Law;
- (4) amend the time for contractors to submit information under the Wage Requirements Law;
- (5) permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
- (6) repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;
- (7) amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
- (8) permit a using department to file a dispute under the administrative dispute resolution process; and
- (9) generally amend the County Procurement Law.

By amending

Montgomery County Code

Chapter 11B. Contracts and Procurement

Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, and 11B-67.

By repealing

Montgomery County Code

Chapter 11B. Contracts and Procurement

Section 11B-33B

Boldface *Heading or defined term.*

<u>Underlining</u>
Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

<u>Double underlining</u>

Added by amendment.

[[Double boldface brackets]] Deleted from existing law or the bill by amendment.

* * Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, 11B-1 64, and 11B-67 are amended and Section 11B-33B is repealed as follows: 2 11B-4. Exemptions. 3 This Chapter, other than Article XII, does not apply to: (a) 4 5 (9) obtaining the services of experts, consultants, and investigators 6 by the County Attorney, whether in anticipation of litigation or in 7 preparation for trial; 8 obtaining advertising services from media sources; and 9 (10)any other procurement exempted from this Chapter by another 10 (11)11 law. * * 12 11B-17A. Internet Posting Requirements. 13 Each using department must post each [planed] planned informal 14 (a) solicitation to purchase [of] goods, services, and construction, [valued at 15 \$5,000 to \$25,000], with a value greater than \$10,000 and less than 16 \$100,000, on a County web site for 5 business days before making a 17 purchase or entering into a contract. Each purchase must be made as 18 19 provided under Section 11B-13. * 20 21 11B-18. Bid security. 22 The Director may require bid security as a condition of submitting a competitive sealed bid. The Director [determines] must determine the amount of bid 23 24 security. Bid security must be: a bond provided by a surety company authorized and licensed to do 25 (a)

business in this State;

26

27				*	*	*		
28	11B-33A. V	Vage r	equire	ements.				
29				*	*	*		
30	(b)	Ехсер	otions	to coverage	. This Section	n does not ap	ply to:	
31		(1)	[a co	ntractor wh	o:			
32			(A)	employs	fewer than 1	0 employees	s when the c	ontractor
33				submits a	bid or propos	sal, and		
34			(B)	does not	employ 10 c	or more empl	oyees at any	time the
35				contract is	s in effect as a	a result of per	forming the co	ontract;]
36		[(2)]	a con	tractor who	, at the time a	a contract is s	igned:	
37			(A)	has receiv	ed less than §	650,000 from	the County in	the most
38				recent 12-	month period	l; and		
39			(B)	will be e	entitled to re	ceive less th	nan \$50,000 i	from the
40				County ur	nder that cont	ract in the nex	xt 12-month p	eriod;
41		[(3)] <u>(</u>	<u>2)</u>	a contract	with a public	entity;		
42		[(4)](<u>3)</u>	a contract	with a nonp	rofit organiza	ation that has	qualified
43			for a	an exempti	on from fee	leral income	taxes under	Section
44			501(0	c)(3) of the 3	Internal Reve	enue Code;		
45		[(5)] <u>(</u>	<u>4)</u>	a non-con	npetitive cont	tract awarded	under Section	າ 11B-14
46			if the	Chief Adn	ninistrative C	Officer finds t	hat the perform	mance of
47			the	contract w	ould be sig	gnificantly in	npaired if th	ne wage
48			requi	rements of	this Section a	pplied;		
49		[(6)] <u>(</u>	<u>5)</u>	a contract	for electricity	y, telephone,	cable television	n, water,
50			sewe	r, or similar	service deliv	ered by a reg	ulated public	ıtility;
51		[(7)] <u>(</u>	<u>6)</u>	a contract	for services	needed imm	nediately to pr	revent or
52			respo	ond to an im	minent threat	to public hea	alth or safety;	

53		[(8)]	<u>(7)</u>	an employer to the extent that the employer is expressly			
54	precluded from complying with this Section by the terms of any						
55	federal or state law, contract, or grant;						
56		[(9)] <u>(</u>	<u>(8)</u>	a bridge contract entered into under Section 11B-42; or			
57		[(10)	<u>](9)</u>	a contract entered into under a cooperative procurement			
58			unde	r Section 11B-40.			
59	The	Execut	ive by	regulation may increase the amount in subsection (b)(2) to			
50	reflect incre	eases ir	the co	ost of living.			
51	(c)	Solic	itation	requirements.			
52		(1)	Each	bid or proposal to provide services to the County must			
53			speci	fy how the contractor and each subcontractor will comply			
54			with	these wage requirements, and must include sufficient funds			
55			to me	eet these requirements. The Director, for good cause shown,			
66			may	permit a bidder or proposer to provide this information after			
57			the b	id or proposal is submitted if:			
58			<u>(A)</u>	the information is provided before the time for evaluation			
59				of the bid or proposal and no later than contract award;			
70			<u>(B)</u>	the original bid or proposal price does not change; and			
71			<u>(C)</u>	the Director approves the later submission in writing.			
72		(2)	Each	bid or proposal to provide services to the County which is			
73			subm	nitted by an organization that is exempt from coverage under			
74			subse	ection (b)(4) must specify the wage the organization intends			
75			to pa	y to those employees who will perform direct, measurable			
76			work	under the contract, and any health insurance the			
77			orgar	nization intends to provide to those employees. In evaluating			
78			the c	cost of a bid or proposal the County must disregard any			
79			addit	ional cost attributable to payment of the wage requirements			

of this Section by any organization that is exempt from coverage
under subsection (b)(4) when compared to a bid or proposal
submitted by another organization that is also exempt from
coverage under subsection (b)(4).

(3) A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Section.

* * *

11B-33B. [Use of County Funds] Reserved.

- [(a) Purpose. Sound fiscal management requires vigilance to ensure that County funds appropriated for a service contract or a grant award to participate in a County-funded program are expended solely for the public purpose for which they are appropriated. If County funds are appropriated for a service contract or a grant award to participate in a County-funded program, and those funds are instead used to encourage, discourage, or otherwise influence union activity or organization, the proprietary interests of the County are adversely affected. The use of County funds to encourage, discourage, or otherwise influence employees from union activity or organizing constitutes a misuse of County resources.
- (b) Use of Funds. County funds appropriated for a service contract or a grant award to participate in a County-funded program must not be encumbered or used to assist, promote, deter, or otherwise influence union activity or organizing. Nothing in this Section shall be construed to prohibit the expenditure of County funds appropriated for a service

106		contra	act or	a grant award from being used to perform another act					
107		requi	required by law.						
108	(c)	Speci	Specific Restrictions. County funds for a service contract or a grant						
109		award	award to participate in a County-funded program must not be used to:						
110		(1)	prepa	re, mail, or otherwise distribute materials related to union					
111			activi	ty or organizing;					
112		(2)	hire a	an attorney or a consultant to assist, promote, deter, or					
113			otherv	wise influence union activity or organizing;					
114		(3)	encou	rage, discourage, or otherwise influence an employee from					
115			taking	g a position on union organizing in the workplace;					
116		(4)	preve	nt or facilitate access to an employer's facilities or property					
117			by a l	abor organization or its representatives;					
118		(5)	encourage or discourage a program manager, policy council,						
119			committee, or community or parent group from assisting or						
120			partic	ipating in a union activity or organizing.					
121	(d)	Enfor	cemen	t.					
122		(1)	The C	Chief Administrative Officer must require each contractor or					
123			grante	ee to:					
124			(A)	Certify that the contractor or grantee will not expend					
125				County funds to assist, promote, deter, or otherwise					
126				influence union activity or organizing and will comply					
127				with the requirements of this Section.					
128			(B)	Keep and submit any records associated with County funds					
129				received for a service contract or a grant award to					
130				participate in a County-program necessary to show					
131				compliance. A contractor or grantee must provide these					
132				records to the County upon request.					

133		(2) The Chief Administrative Officer must enforce this Section and
134		investigate any complaint of a violation.
135	(e)	Penalty. A contractor or grantee must pay the County the amount of
136		funds expended in violation of this Section.]
137		* * *
138	11B-33C. F	Prevailing Wage Requirements — Construction Contracts.
139		* * *
140	(c)	Payment of prevailing wage. Any contractor and subcontractor that
141		performs direct and measurable construction work on a County financed
142		construction contract must pay each employee at a rate equal to or more
143		than the prevailing wage [currently] in effect when the solicitation is
144		<u>published</u> for the type of work performed.
145		* * *
	11R-35 Co	ontract dispute resolution.
146	11 D -33. C0	
146 147	(a)	Dispute submitted. A contractor must submit any dispute arising under
		•
147		Dispute submitted. A contractor must submit any dispute arising under
147 148		Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute
147 148 149	(a)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director.
147 148 149 150	(a)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the
147 148 149 150	(a)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the using department a written decision approving or denying the dispute in
147 148 149 150 151	(a)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 45 days after receiving the dispute. If the
147 148 149 150 151 152	(a)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 45 days after receiving the dispute. If the Director does not resolve the dispute within 45 days, the dispute is
147 148 149 150 151 152 153	(a) (b)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 45 days after receiving the dispute. If the Director does not resolve the dispute within 45 days, the dispute is denied.
147 148 149 150 151 152 153 154	(a) (b)	Dispute submitted. A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director. Decision by Director. The Director must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 45 days after receiving the dispute. If the Director does not resolve the dispute within 45 days, the dispute is denied. Appeal to Chief Administrative Officer.

159			Director's decision, or if no decision is rendered, within 75 days
160			after submitting the dispute.
161		(2)	The Chief Administrative Officer must decide the appeal after
162			considering any written information submitted by the Director,
163			using department, and the contractor.
164		(3)	The Chief Administrative Officer may hold a hearing on the
165			appeal. The Chief Administrative Officer must complete any
166			hearing on the appeal within:
167			(A) 60 days after receiving the appeal for disputes involving
168			[under \$10,000] <u>less</u> than <u>\$50,000</u> ;
169			(B) 90 days after receiving the appeal for disputes involving
170			between [\$10,000] <u>\$50,000</u> and \$100,000; and
171			(C) 135 days after receiving the appeal for disputes involving
172			more than \$100,000.
173		(4)	The Chief Administrative Officer may require the contractor and
174			the using department to [produce] provide additional information
175			about the dispute.
176		(5)	The Chief Administrative Officer must give the contractor and
177			the using department a written decision approving or denying the
178			dispute in whole or in part within 30 days after receiving the
179			appeal or, if a hearing is held, within 30 days after receiving the
180			hearing officer's report. If the Chief Administrative Officer does
181			not give the contractor and using department a written decision
182			on the appeal within the applicable period, the dispute is denied.
183	(d)	Appe	al to court.
184		(1)	The contractor may appeal the Chief Administrative Officer's
185			decision to the Circuit Court under the Maryland Rules.

	(2)	The con	ntract	or or the	e Cou	ınty	may	appeal	the d	lecisio	n of	the
		Circuit (Court	to the Co	ourt o	f Spe	ecial	Appeal	s unde	r State	law.	
	(3)	In the	event	of a st	tatuto	ry d	enia	under	Subse	ection	<u>(b)</u> ,	the
		contract	or <u>or</u>	the Cou	<u>ınty</u> r	nay	file	a legal	action	in a	court	t of
		appropr	iate ju	urisdictio	n. Th	at co	ourt 1	must hea	ar the c	ase <i>de</i>	nove	9.
(e)	Cons	colidation	of d	isputes. '	The I	Direc	ctor	or the	Chief	Admir	istra	tive
	Offic	er may co	onsoli	date [a co	ontrac	ctor's] <u>mu</u>	<u>ltiple</u> di	sputes	if:		
	(1)	the disp	utes h	nave com	mon (quest	ions	of law	or fact;	and		
	(2)	the cont	racto	r or using	depa	rtme	nt re	equests o	consoli	dation		
The	time	limits in	this	Section	for t	the 1	last	dispute	filed	apply	to	any
consolidate	ed dispu	ite.										
			*		*		*	:				
11B-67. Pr	ocedu	res.										
			*		*		*	:				
(d)	A bu	isiness m	ust af	ffirm and	l prov	vide	supp	orting	docum	entatio	n to	the
	Direc	ctor to she	ow th	at it is a	local	sma	all b	usiness	as defi	ned in	Sect	tion
	11B-	65(c). <u>T</u>	he D	irector n	<u>nay</u> <u>ir</u>	vest	igate	e and v	erify tl	ne info	ormat	<u>tion</u>
	provi	ided on th	<u>e app</u>	lication.								
			*		*		*	:				
Sec.	2.	Expedia	ted E	ffective l	Date.							
The	Counc	il declare	es tha	at this le	egislat	tion	is n	ecessar	y for	the in	nmed	iate
protection	of the p	oublic inte	rest.	This Act	takes	effe	ct or	ı Januar	y 1, 20	10.		
Approved:												
	The consolidate 11B-67. Pr (d) Sec. The protection of	(e) Consolidated (1) (2) The time consolidated disputation of the protection of the	(3) In the contract appropriate (b) Consolidation Officer may consolidated dispute. (1) the dispute (2) the contract of the time limits in consolidated dispute. (1) The time limits in consolidated dispute. (2) The Council declared protection of the public interprotection o	Circuit Court (3) In the event contractor or appropriate just of the Consolidation of description of the Consolidation of the Council declares the Council	Circuit Court to the Co. (3) In the event of a st contractor or the Co. appropriate jurisdiction (e) Consolidation of disputes. Officer may consolidate [a co. (1) the disputes have com. (2) the contractor or using the time limits in this Section consolidated dispute. * 11B-67. Procedures. * (d) A business must affirm and Director to show that it is a 11B-65(c). The Director may provided on the application. * Sec. 2. Expedited Effective In The Council declares that this let protection of the public interest. This Act.	Circuit Court to the Court of a statutor contractor or the County of appropriate jurisdiction. The appropriate jurisdiction. The Incomplete Consolidation of disputes. The Incomplete Consolidate Incomplete Consolidate Incomplete Consolidate Incomplete Consolidate Incomplete Consolidate Incomplete Consolidated Consoli	Circuit Court to the Court of Special Country of a statutory of the County may appropriate jurisdiction. That country of the Consolidation of disputes. The Director of the disputes have common quest (2) the contractor or using department of the limits in this Section for the first consolidated dispute. *** ** ** ** ** ** ** ** **	Circuit Court to the Court of Special (3) In the event of a statutory denial contractor or the County may file appropriate jurisdiction. That court is appropriate jurisdiction. That court is appropriate jurisdiction. The Director Officer may consolidate [a contractor's] must (1) the disputes have common questions (2) the contractor or using department resulting the consolidated dispute. The time limits in this Section for the last consolidated dispute. * * * * ** ** ** ** ** ** **	Circuit Court to the Court of Special Appeal (3) In the event of a statutory denial under contractor or the County may file a legal appropriate jurisdiction. That court must heat officer may consolidate [a contractor's] multiple did (1) the disputes have common questions of law (2) the contractor or using department requests of the time limits in this Section for the last dispute consolidated dispute. * * * * 11B-67. Procedures. * (d) A business must affirm and provide supporting of Director to show that it is a local small business and provided on the application. * * * * Sec. 2. Expedited Effective Date. The Council declares that this legislation is necessary protection of the public interest. This Act takes effect on January	Circuit Court to the Court of Special Appeals under (3) In the event of a statutory denial <u>under Subsecontractor or the County</u> may file a legal action appropriate jurisdiction. That court must hear the conficer may consolidate [a contractor's] <u>multiple</u> disputes (1) the disputes have common questions of law or facts (2) the contractor or using department requests consolidated dispute. ** ** ** ** ** ** ** ** **	Circuit Court to the Court of Special Appeals under State (3) In the event of a statutory denial under Subsection contractor or the County may file a legal action in a appropriate jurisdiction. That court must hear the case de (e) Consolidation of disputes. The Director or the Chief Admir Officer may consolidate [a contractor's] multiple disputes if: (1) the disputes have common questions of law or fact; and (2) the contractor or using department requests consolidation. The time limits in this Section for the last dispute filed apply consolidated dispute. * * * (d) A business must affirm and provide supporting documentation Director to show that it is a local small business as defined in 11B-65(c). The Director may investigate and verify the inferprovided on the application. * * * Sec. 2. Expedited Effective Date. The Council declares that this legislation is necessary for the improtection of the public interest. This Act takes effect on January 1, 2010.	Circuit Court to the Court of Special Appeals under State law. (3) In the event of a statutory denial under Subsection (b), contractor or the County may file a legal action in a cour appropriate jurisdiction. That court must hear the case de nove (e) Consolidation of disputes. The Director or the Chief Administra Officer may consolidate [a contractor's] multiple disputes if: (1) the disputes have common questions of law or fact; and (2) the contractor or using department requests consolidation. The time limits in this Section for the last dispute filed apply to consolidated dispute. * * * * 11B-67. Procedures. * * * (d) A business must affirm and provide supporting documentation to Director to show that it is a local small business as defined in Sec 11B-65(c). The Director may investigate and verify the information provided on the application. * * * * Sec. 2. Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2010.

210	Approved:		
211			
	Isiah Leggett, County Executive	Date	
212	This is a correct copy of Council action.		
213			
	Linda Lauer, Clerk of the Council	Date	